

RECIPROCAL TRADE

*Agreement signed at Quito August 6, 1938*¹

Proclaimed by Ecuador August 6, 1938

Proclaimed by the President of the United States September 23, 1938, as corrected by exchanges of notes August 6 and September 9 and 13, 1938

Entered into force October 23, 1938

*Modified by agreement of March 2, 1942*²

*Terminated July 17, 1956*³

53 Stat. 1951; Executive Agreement Series 133

The President of the United States of America and the Supreme Chief of the Republic of Ecuador, being desirous of strengthening the traditional bonds of friendship between the two countries by maintaining the principle of equality of treatment as the basis of commercial relations and by granting mutual and reciprocal concessions and advantages for the promotion of trade, have through their respective Plenipotentiaries arrived at the following Agreement:

ARTICLE I

Articles the growth, produce or manufacture of the United States of America, enumerated and described in Schedule I¹ annexed to this Agreement and made a part thereof, shall, on their importation into the Republic of Ecuador, be exempt from ordinary customs duties in excess of those set forth in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the Republic of Ecuador in force on the day of the signature of this Agreement.

ARTICLE II

Articles the growth, produce or manufacture of the Republic of Ecuador, enumerated and described in Schedule II annexed to this Agreement and made a part thereof, shall, on their importation into the United States of America, be exempt from ordinary customs duties in excess of those set forth

¹ For schedules annexed to agreement, see 53 Stat. 1968 or p. 18 of EAS 133.

² EAS 248, *post*, p. 372.

³ Pursuant to notice of termination given by the United States Jan. 17, 1956.

and provided for in the said Schedule. The said articles shall also be exempt from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws of the United States of America in force on the day of the signature of this Agreement.

ARTICLE III

The provisions of Articles I and II of this Agreement shall not prevent the Government of either country from imposing at any time on the importation of any product a charge equivalent to an internal tax imposed in respect of a like domestic product or in respect of a commodity from which the imported product has been manufactured or produced in whole or in part.

ARTICLE IV

The United States of America and the Republic of Ecuador agree that the notes included in Schedules I and II are hereby given force and effect as integral parts of this Agreement.

ARTICLE V

Articles the growth, produce or manufacture of the United States of America or the Republic of Ecuador, shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national origin or any other foreign origin.

ARTICLE VI

In respect of articles the growth, produce or manufacture of the United States of America or the Republic of Ecuador, enumerated and described in Schedules I and II, respectively, imported into the other country, on which *ad valorem* rates of duty, or duties based upon or regulated in any manner by value, are or may be assessed, it is understood and agreed that the bases and methods of determining dutiable value and of converting currencies shall be no less favorable to importers than the bases and methods prescribed under laws and regulations of the Republic of Ecuador and the United States of America, respectively, in force on the day of the signature of this Agreement.

ARTICLE VII

No prohibitions, import or customs quotas, import licenses, or any other form of quantitative regulation, whether or not operated in connection with any agency of centralized control, shall be imposed by the Republic of Ecuador on the importation or sale of any article the growth, produce or manufacture of the United States of America enumerated and described in Schedule I, or by the United States of America on the importation or sale of any article

the growth, produce or manufacture of the Republic of Ecuador enumerated and described in Schedule II, except as otherwise specifically provided for in the said Schedules.

The foregoing provision shall not apply to quantitative restrictions in whatever form imposed by the United States of America or the Republic of Ecuador on the importation or sale of any article the growth, produce or manufacture of the other country, in conjunction with governmental measures operating to regulate or control the production, market supply or prices of like domestic articles, or tending to increase the labor costs of production of such articles, or imposed in order to maintain the exchange value of the currency of the country. Whenever the Government of either country proposes to establish or change any restriction authorized by this paragraph, it shall give notice thereof in writing to the other Government and shall afford such other Government an opportunity within thirty days after receipt of such notice to consult with it in respect of the proposed action; and if an agreement with respect thereto is not reached within thirty days following receipt of the aforesaid notice, the Government which proposed to take such action shall be free to do so at any time thereafter, and the other Government shall be free within fifteen days after such action is taken to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE VIII

1. If the Government of the United States of America or the Government of the Republic of Ecuador establishes or maintains any form of quantitative restriction or control of the importation or sale of any article in which the other country has an interest, or imposes a lower import duty or charge on the importation or sale of a specified quantity of any such article than the duty or charge imposed on importations in excess of such quantity, the Government taking any action shall:

(a) Give public notice of the total quantity, or any change therein, of any such article permitted to be imported or sold or permitted to be imported or sold at such lower duty or charge, during a specified period;

(b) Allot to the other country for such specified period a share of such total quantity as originally established or subsequently changed in any manner equivalent to the proportion of the total importation of such article which such other country supplied during a previous representative period, unless it is mutually agreed to dispense with such allotment; and

(c) Give public notice of the allotments of such quantity among the several exporting countries, and at all times upon request advise the Government of the other country of the quantity of any such article the growth, produce or manufacture of each exporting country which has been imported or sold or for which licenses or permits for importation or sale have been granted.

2. Neither the United States of America nor the Republic of Ecuador shall regulate the total quantity of importations into its territory or sales therein of any article in which the other country has an interest, by import licenses or permits issued to individuals or organizations, unless the total quantity of such article permitted to be imported or sold, during a quota period of not less than three months, shall have been established, and unless the regulations covering the issuance of such licenses or permits shall have been made public before such regulations are put into force.

ARTICLE IX

In the event that the Government of the United States of America or the Government of the Republic of Ecuador establishes or maintains a monopoly for the importation, production or sale of a particular commodity or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular commodity, the Government of the country establishing or maintaining such monopoly, or granting such monopoly privileges, agrees that in respect of the foreign purchases of such monopoly or agency the commerce of the other country shall receive fair and equitable treatment. To this end it is agreed that in making its foreign purchases of any product such monopoly or agency will be influenced solely by those considerations, such as price, quality, marketability, and terms of sale, which would ordinarily be taken into account by a private commercial enterprise interested solely in purchasing such product on the most favorable terms.

ARTICLE X

In the event that the Government of the United States of America or the Government of the Republic of Ecuador establishes or maintains, directly or indirectly, any form of control of the means of international payment, it shall, in the administration of such control:

(a) Impose no prohibition, restriction, nor delay on the transfer of payment for imported articles the growth, produce, or manufacture of the other country, or of payments necessary for and incidental to the importation of such articles;

(b) Accord unconditionally, with respect to rates of exchange and taxes or surcharges on exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other country, treatment no less favorable than that accorded in connection with the importation of any article whatsoever the growth, produce, or manufacture of any third country; and

(c) Accord unconditionally, with respect to all rules and formalities applying to exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other country, treatment no less favorable

than that accorded in connection with the importation of the like articles the growth, produce, or manufacture of any third country.

In the event that the Government of either country shall make representations concerning the application by the Government of the other country of the provisions of this Article, the Government of such other country shall give sympathetic consideration to such representations, and if, within thirty days after the receipt of such representations, a satisfactory adjustment has not been made or an agreement has not been reached with respect to such representations, the Government making them may, within fifteen days after the expiration of the aforesaid period of thirty days, terminate this Agreement on thirty days' written notice.

ARTICLE XI

With respect to customs duties or charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties or charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all laws or regulations affecting the sale, taxation or use of imported goods within the country, any advantage, favor, privilege or immunity which has been or may hereafter be granted by the United States of America or the Republic of Ecuador to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the Republic of Ecuador or the United States of America, respectively.

ARTICLE XII

Laws, regulations of administrative authorities and decisions of administrative or judicial authorities of the United States of America or the Republic of Ecuador, respectively, pertaining to the classification of articles for customs purposes or to rates of duty shall be published promptly in such a manner as to enable traders to become acquainted with them. Such laws, regulations and decisions shall be applied uniformly at all ports of the respective country, except as otherwise specifically provided in statutes of the United States of America relating to articles imported into Puerto Rico.

No administrative ruling by the United States of America or the Republic of Ecuador effecting advances in rates of duties or in charges applicable under an established and uniform practice to imports originating in the territory of the other country, or imposing any new requirement with respect to such importations, shall be effective retroactively or with respect to articles either entered for or withdrawn for consumption prior to the expiration of thirty days after the date of publication of notice of such ruling in the usual official manner. The provisions of this paragraph do not apply to administrative orders imposing anti-dumping duties, or relating to regulations for the pro-

tection of human, animal, or plant life, or relating to public safety, or giving effect to judicial decisions.

ARTICLE XIII

In the event that the rate of exchange between the currencies of the United States of America and the Republic of Ecuador varies considerably from the rate obtaining on the day of the signature of this Agreement, the Government of either country, if it considers the change in rate so substantial as to prejudice the industry or commerce of the country, shall be free to propose negotiations for the modification of this Agreement or to terminate this Agreement in its entirety on thirty days' written notice.

ARTICLE XIV

Greater than nominal penalties will not be imposed in the United States of America or in the Republic of Ecuador upon importations of articles the growth, produce or manufacture of the other country because of errors in documentation obviously clerical in origin or where good faith can be established.

The Government of each country will accord sympathetic consideration to, and when requested will afford adequate opportunity for consultation regarding, such representations as the other Government may make with respect to the operation of customs regulations, quantitative restrictions or the administration thereof, the observance of customs formalities, and the application of sanitary laws and regulations for the protection of human, animal, or plant life or health.

In the event that the Government of either country makes representations to the Government of the other country in respect of the application of any sanitary law or regulation for the protection of human, animal, or plant life, and if there is disagreement with respect thereto, a committee of technical experts on which each Government shall be represented shall, on the request of either Government, be established to consider the matter and to submit recommendations to the two Governments.

ARTICLE XV

Except as otherwise provided in the second paragraph of this Article, the provisions of this Agreement relating to the treatment to be accorded by the United States of America and the Republic of Ecuador, respectively, to the commerce of the other country, shall not apply to the Philippine Islands, the Virgin Islands, American Samoa, the Island of Guam, or to the Panama Canal Zone.

Subject to the reservations set forth in the third and fourth paragraphs of this Article, the provisions of this Agreement regarding most-favored-nation treatment shall apply to articles the growth, produce or manufacture of any territory under the sovereignty or authority of the United States of

America or the Republic of Ecuador, imported from or exported to any territory under the sovereignty or authority of the other country. It is understood, however, that the provisions of this paragraph do not apply to the Panama Canal Zone.

The advantages now accorded or which may hereafter be accorded by the United States of America or the Republic of Ecuador to adjacent countries in order to facilitate frontier traffic, and advantages resulting from a customs union to which either the United States of America or the Republic of Ecuador may become a party so long as such advantages are not extended to any other country, shall be excepted from the operation of this Agreement.

The advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or to the Republic of Cuba shall be excepted from the operation of this Agreement. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another, irrespective of any change in the political status of any of the territories or possessions of the United States of America.

ARTICLE XVI

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either country against the other country in favor of any third country, and without prejudice to the provisions of the second and third paragraphs of Article XIV, the provisions of this Agreement shall not extend to prohibitions or restrictions (1) imposed on moral or humanitarian grounds; (2) designed to protect human, animal or plant life or health; (3) relating to prison-made goods; (4) relating to the enforcement of police or revenue laws.

Nothing in this Agreement shall be construed to prevent the adoption of measures prohibiting or restricting the exportation of gold or silver, or to prevent the adoption of such measures as either Government may see fit with respect to the control of the export or sale for export of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies.

ARTICLE XVII

In the event that the Government of the United States of America or the Government of the Republic of Ecuador adopts any measure which, even though it does not conflict with the terms of this Agreement, is considered by the Government of the other country to have the effect of nullifying or impairing any object of the Agreement, the Government which has adopted any such measure shall consider such representations and proposals as the other Government may make with a view to effecting a mutually satisfactory adjustment of the matter.

ARTICLE XVIII

The present Agreement shall, from the date on which it comes into force, supplant the *modus vivendi* between the United States of America and the Republic of Ecuador, effected by exchange of notes signed on June 12, 1936.*

ARTICLE XIX

The present Agreement shall come into full force on the thirtieth day following proclamation thereof by the President of the United States of America and the Supreme Chief of the Republic of Ecuador, or should the proclamations be issued on different days, on the thirtieth day following the date of the later in time of such proclamations, and, subject to the provisions of Article VII, Article X, or Article XIII, shall remain in force and effect until six months from the day on which either Government shall give notice of its intention to terminate it. The Government of each country shall notify the Government of the other country of the date of its proclamation.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, both authentic, at the City of Quito this sixth day of the month of August of the year one thousand nine hundred and thirty-eight.

For the President of the United States of America

BOAZ LONG [SEAL]

For the Supreme Chief of the Republic of Ecuador

LUIS BOSSANO [SEAL]

[For schedules annexed to agreement, see 53 Stat. 1968 or p. 18 of EAS 133.]

* TS 93, *ante*, p. 333.